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In the Supreme Court of the United States

October Term 1988

LOUISIANA SOCIETY OF INDEPENDENT ACCOUNTANTS and DALL HALLIGAN EDEN,

Petitioners,

Versus

STATE OF LOUISIANA, Through the Attorney General of the State of Louisiana, and the STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANTS OF LOUISIANA,

Respondents.

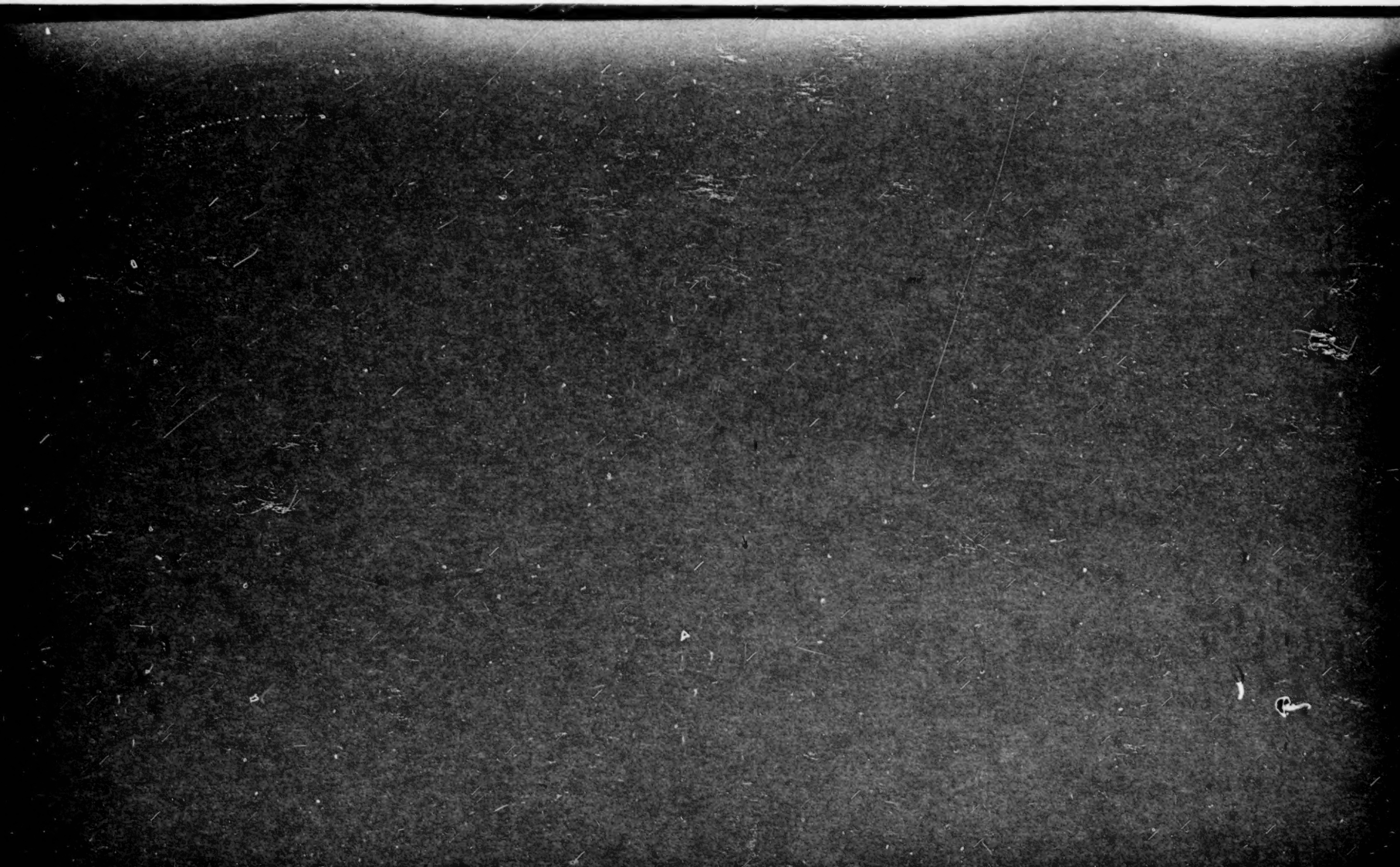
On Petition For Writ of Certiorari
To the Court of Appeal
For the Fourth Circuit,
State of Louisiana

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The question presented by this case is whether a state's regulation of the profession of public accounting is subject to First Amendment scrutiny simply because the conduct or practice of the profession entails a form of communication.

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Louisiana, in common with all other states, regulates the profession of public accounting, restricting its practice to those who, by education and examination, have demonstrated the professional competency requisite to certification and licensing. Petitioners here—an individual incapable or unwilling to secure state licensing as a certified public accountant and an organization of such individuals—seeking to escape such regulation, and having unsuccessfully urged and subsequently abandoned a host of insubstantial theories, cling to a patently fallacious notion: that, since a component of practicing public

accounting involves the communication of an opinion, the regulation of public accounting by Louisiana is impermissible under the First Amendment.

In an opinion which petitioners now urge this Court to review, a Louisiana appellate court correctly rejected the suggestion that freedom of expression is implicated by state regulation of public accountancy. *Accountants' Ass'n of Louisiana* v. *State of Louisiana*, 533 So.2d 1251 (La. App. 4th Cir. 1988). On the same day, in a virtually identical case brought by petitioner's sister association in Virginia, a Federal appellate court in reached the same result. *Accountant's Soc'y of Virginia* v. *Bowman*, 860 F.2d 602 (4th Cir. 1988). No other decision by any state court of last resort or any federal court stands in conflict with these decisions. Both decisions, and their rationale, are entirely consistent with the decisions of this Court.

This brief, accordingly, is submitted on behalf of the State Board of Certified Public Accountants of Louisiana (Board), respondent, in opposition to the petition for writ of certiorari filed herein by the Louisiana Society of Independent Accountants and Dall Halligan Eden. Under Rule 17 or otherwise, this case simply does not warrant the Court's attention.

OPINION BELOW

The instant petition for writ of certiorari is prosecuted from the opinion of the Louisiana Fourth Circuit Court of Appeal, issued October 27, 1988, *Accountants' Ass'n of Louisiana* v. *State of Louisiana*, 533 So.2d 1251 (La. App. 4th Cir. 1988), *writ denied*, ___ So.2d ___ (La., Feb. 24, 1989). The opinion is referenced with the observation that its reproduction by

Petitioners in the Appendix of their petition herein[1] omits a substantial portion of the Louisiana appellate court's opinion.[2]

RESTATEMENT OF THE CASE

To frame the issue presented as it does, LSIA must necessarily distort and grossly misrepresent both the nature of its claims and the rulings of the courts below. The Board is regrettably compelled, then, to restate the case, more fully and objectively than as presented by petitioners. In doing so, we believe it appropriate to review the factual and legislative landscape against which this action is set, the specific relief sought by petitioners, and the nature of their residual "constitutional" claim.

I. The Parties

The Louisiana Society of Independent Accountants (LSIA),[3] petitioner here, represents itself as a "Louisiana non-profit corporation" whose "members . . . are citizens of

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[1]Petition for Writ of Certiorari, Louisiana Soc'y of Indep. Accountants, *Et Al.* v. State of Louisiana, *Et Al.*, No. 88-1918, Appendix E, at A-21 (U.S., filed May 24, 1989) [hereinafter cited as LSIA Petition].

[2]The omission occurs at LSIA Petition, App. E, at A-27, following the quoted material citation. The omitted portion of the opinion appears at 533 So.2d at 1255-56.

[3]When originally instituted, this action was brought on behalf of the Accountants' Association of Louisiana (AAL) and Durham, Rohr & McDaniel, a partnership. By amended pleadings filed shortly prior to trial, AAL advised that it had adopted a new name, the Louisiana Society of Independent Accountants, the partnership withdrew as a party, and Dall Halligan Eden was substituted.

Louisiana and engaged in the practice of accounting . . . , but who do not hold certificates as certified public accountants from the State of Louisiana . . . ."[4] Dall Halligan Eden is apparently a member of LSIA and, as such, an individual who offers to provide accounting services but is not a certified public accountant. Petitioners thus represent a group of individuals who represent that they practice some form of accounting without any certification or license and hence without regulation by any state agency, never having taken—or having taken and failed—the public accountancy certification examination administered by the State.[5]

The Board, respondent here, is an administrative agency of the State of Louisiana, constituted under and charged with administration and enforcement of the Louisiana Public Accountancy Law (Accountancy Law).[6] Such law vests in the Board various powers typical of administrative agencies, which are said to exercise quasi-executive, quasi-legislative and quasi-judicial authority, or enforcement, rulemaking and adjudicative powers.

II. The Accountancy Law

The State of Louisiana, along with every other state in the nation, has long recognized the practice of public accounting as a highly skilled and technical profession imbued with the public interest and affecting the public welfare. Historically—as with law, medicine, and the other professions—public accounting has been subject to regulation by Louisiana and

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[4]Petition for Declaratory and Injunctive Relief at 1-2, *Accountants' Association of Louisiana, Et Al.* v. *State of Louisiana, Et Al.*, No. 83-6572 (Civ. D. Ct., Orl. Par., filed Apr. 20, 1983) [hereinafter cited as Trial Court Petition].

[5]Ms. Eden, for example, has, according to Board records, sat for the Uniform CPA Examination on seven occasions, but never successfully passed.

[6]LA. REV. STAT. ANN. §§ 37:71-87 (West 1988).

other states, in the exercise of their police power, to ensure that those holding themselves out as experts in accounting are qualified in fact to do so. See *State* v. *DeVerges,* 153 La. 349, 95 So. 805 (1923); *Accountants' Ass'n of Louisiana* v. *State of Louisiana,* 487 So.2d 155 (La. App. 4th Cir. 1986);[7] see also *People* v. *Hill,* 136 Cal. Rptr. 30 (Cal. 1977); *Texas State Board of Public Accountancy* v. *Fulcher,* 515 S.W.2d 950 (Tex. 1974); *Mercer* v. *Hemmings,* 170 So.2d 33 (Fla. 1965); *Davis* v. *Allen,* 307 S.W.2d 800 (Tenn. 1957); *People* v. *Marlowe,* 203 N.Y.S. 474 (N.Y. 1923); *Elliott* v. *University of Illinois,* 6 N.E.2d 647 (Ill. 1936).

Public accounting has been regulated by Louisiana since 1908 through laws defining the profession, prescribing minimum standards for and requiring certification, and establishing an administrative agency, the Board, to implement such prescriptions.[8] In its contemporary embodiment, the Accountancy Law vests in the Board authority to prescribe educational standards for certification, La. Rev. Stat. § 37:78(B)(2); administer a competency examination, La. Rev. Stat. § 37:75(B)(4); and prescribe rules governing professional conduct and requiring continuing professional education, La. Rev. Stat. § 37:75(B)(2), (3).

The axis of the Accountancy Law is its pronouncement that "[n]o person . . . shall engage in the practice of public accounting in the state of Louisiana unless he has in his personal possession a current certified public accountant license issued under [the Law]." La. Rev. Stat. § 37:77(B). This prohibition is given content by the Accountancy Law's specifi-

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[7]"We interpret the overall intent of the Public Accounting Law as protecting the public from the expressions of opinion by persons unqualified in the highly technical profession of accounting." 487 So.2d at 159.

[8]Acts 1908, No. 125, *as amended by* Acts 1912, No. 247; Acts 1924, No. 136, *as amended by* Acts 1950, No. 497; Acts 1968, No. 427; Acts 1970, No. 192, *as amended and reenacted by* Acts 1979, No. 510, *as amended by* Acts 1984, No. 747.

cation that the "practice of public accounting" or "practicing public accounting" embraces:

> (1) offering to perform, or performing for the public, accounting or accounting related services while holding one's self out as a certified public accountant or as a firm of certified public accountants; or
>
> (2) signing or affixing one's own or firm name, or other name used in one's profession or business, to any opinion or certificate attesting in any way to the reliability of any representation or estimate in regard to any person or organization, embracing financial information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans, and appropriations, together with any wording accompanying or contained in such opinion or certificate which indicates (a) that he is an accountant or auditor or that the firm is composed of, or employs, accountants or auditors, or (b) that he has expert knowledge in accounting or auditing or that the firm is composed of or employs persons having expertise in accounting or auditing; or
>
> (3) offering to the public or to prospective clients to perform, or actually performing on behalf of clients, professional services that involve or require an audit, or examination of financial records leading to the expression of a written opinion concerning same; or
>
> (4) maintaining an office for the transaction of business as a certified public accountant.

La. Rev. Stat. § 37:72(A).[9]

In common with many other states, the Louisiana law

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[9]The statutory definition of public accounting further expressly excludes from its scope bookkeeping services and the preparation of tax returns, provided that the bookkeeper or preparer does not identify himself as a Certified Public Accountant, or C.P.A.

embodies a two-tier licensing scheme under which a public accountant must be both certified and licensed in order to engage in the practice of public accounting. Certification as a Certified Public Accountant (CPA) may be attained upon meeting age, character and accounting education requirements and successfully passing an examination administered by the Board. La. Rev. Stat. § 37:78. A CPA. is not entitled to practice as such, however, until licensed, see La. Rev. Stat. § 37:78(B), for which a CPA. becomes qualified by evidencing a prescribed period of professional experience. La. Rev. Stat. § 37:79.

Once licensed, a Certified Public Accountant's maintenance of licensure is subject to satisfaction of mandatory continuing professional education requirements adopted by the Board, La. Rev. Stat. § 37:82(C)(2) (see also La. Rev. Stat. § 37:75(B)(3)) and to observance of rules of professional conduct enforced by the Board. Certification and licensing, moreover, is subject to suspension or revocation by the Board for certain causes enumerated by the Accountancy Law, including "[p]rofessional incompetency," "[e]fforts to deceive or defraud the public," "[r]endering . . . false, deceptive, misleading or unfounded opinions or audits," and "[v]iolation of . . . any rules or regulations of the board or rules of professional conduct promulgated by the board." La. Rev. Stat. § 37:84(A).

The Accountancy Law, in short, imposes a comprehensive regulatory structure on the practice of public accounting which demands not only an initial demonstration of educational qualifications and professional experience, but ongoing observance of professional standards and continuing education under the superintendence of a state agency. In doing so, the law protects the public against the incompetent, unprofessional practice of the profession with its potentially devastating consequences.

III. Audit and Review Functions

From the outset, the focus of this case has been whether an uncertified, unlicensed person may perform a "Review," a financial accounting function which obtains a particular meaning in the profession of public accounting. It is important, then, to understand precisely what the term signifies.

While a public accountant or CPA firm may provide a spectrum of accounting, managerial and consulting services to clients, at the core of the practice of the profession is the public accountant's examination and analysis of financial data and systems and the rendition of an objective, impartial and independent expert opinion or assurance concerning the reliability of such information. Such financial data and the accompanying accountant's report have crucial significance in our national economy, for they are used and relied on by all forms of investors—individual, institutional and governmental—creditors, regulatory governmental agencies and others in making myriad financial decisions which from day to day shape the economic course of the nation.

An Audit and a Review represent but two different levels of financial data analysis and two levels of assurance. What each connotes is defined by the American Institute of Certified Public Accountants (AICPA), a national association which, through its technical committees, is recognized by the profession, by business and industry, and by government, as the authoritative standard-setting body in the field of financial accounting.

An Audit, of course, contemplates a comprehensive examination of financial information, in accordance with detailed standards and procedures, to provide a basis for, and resulting in, the expression of an opinion regarding an entity's financial statements taken as a whole. The objective of an Audit, or examination, of financial statements is said to be "the expression of an opinion on the fairness with which they present financial position, results of operations, and changes in

financial position in conformity with generally accepted accounting principles." Vol. A, AICPA, Professional Standards, United States Auditing Standards § 110.01, at 61 (Jun. 1, 1983).

A Review of financial statements represents an intermediate level of analysis and assurance, being formally defined to consist of

> [p]erforming inquiry and analytical procedures that provide the accountant with a reasonable basis for expressing limited assurance that there are not material modifications that should be made to the statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

See Acctg. & Rev. Serv. Comm., AICPA Statement on Standards for Accounting and Review Services/1, *Compilation and Review of Financial Statements* 3 (Dec. 1978) [hereinafter cited as SSARS-1], incorporated in AICPA Professional Standards, *supra*, § 100.04, at 3313.[10]

A Review, then, is qualitatively similar to an Audit, in that both are conducted in accordance with recognized and prescribed standards and procedures for field work and reporting, and both result in the expression of a form of assurance on the reliability of the examined or reviewed financial statements. The representation that an accountant has

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[10]A "Compilation" of financial statements, in contrast, is defined as "[p]resenting in the form of financial statements information that is the representation of management (owners) without undertaking to express any assurance on the statements." *See* SSARS-1. In undertaking a Compilation of financial statements, thus, an accountant does not perform such investigation, inquiry and analytical procedures as would provide a basis for any expression or implication of assurance as to the reliability of such statements. Rather, a Compilation merely represents the assembly, or "compiling," of information provided to the accountant in the form of financial statements.

performed a Review carries with it the implicit warranty that such recognized standards and procedures have been applied. Signifying that this is the case is the standard form of accountant's Review Report, prescribed by the AICPA for use by certified public accountants:

> I (we) have reviewed the accompanying balance sheet of XYZ Company as of December 31, 19XX, and the related statements of income, retained earnings, and changes in financial position for the year then ended, in accordance with standards established by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management (owners) of XYZ Company.
>
> A review consists principally of inquiries of company personnel and analytical procedures applied to financial data. It is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, I (we) do not express such an opinion.
>
> Based on my (our) review, I am (we are) not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.

AICPA, Professional Standards, *supra*, § 100.35, at 3321. Because this form of report is prescribed by the AICPA and is uniformly employed by certified public accountants, its significance and meaning go well beyond its literal expression. Those reading and relying on an accountant's Review Report are entitled to and do have the expectation and understanding that the Review was conducted and reported in accordance with AICPA standards and has the meaning ascribed to it by the AICPA.

As interpreted by the Board's rules, both the Audit and the Review functions are clearly reserved to licensed certified

public accountants by the Accountancy Law. 3 La. Admin. C. §§ 46:XIX.101(B), 103(A) (1986).

IV. LSIA's Claims

The specific purpose animating this action by the LSIA and one of its members has been and is to secure for LSIA members—who "do not hold certificates as certified public accountants"[11]—the right to perform a Review and render a report relative to financial statements. LSIA specifically seeks a judgment "decreeing that . . . [u]ncertified accountants and members of [LSIA] may render reviews . . . of financial records leading to written accountants' reports . . . ."[12] Thus, LSIA seeks to invalidate as unconstitutional the Accountancy Law's definition of public accounting, insofar as it operates to embrace the Review function and thereby reserve its performance to certified public accountants, La. Rev. Stat. §§ 37:72A(2), (3).

Petitioners' initial challenge to the law advanced a desultory array of statutory and federal and state constitutional claims, questioning both the validity of Board regulations recognizing the Review function as central to the practice of public accounting and, alternatively, attacking the Accountancy Act itself. In its first examination of the case, the state appellate court, reversing the trial court, held that the Accountancy Law had been properly interpreted by the Board to prohibit uncertified persons from undertaking to perform and report on a Review of financial statements. *Accountants' Ass'n of Louisiana* v. *State of Louisiana*, 487 So.2d 155 (La. App. 4th Cir.), *cert. denied*, 492 So.2d 1219 (La. 1986). Because the trial court had not passed on petitioners' myriad constitutional claims, the case was remanded to that court for

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[11] *See* Trial Court Petition ¶ 1, at 1-2.

[12] Trial Court Petition 11.

its disposition of those issues.[13]

There LSIA renewed its assault on the Accountancy Law itself, abandoning most of the theories previously urged, but maintaining claims that the law, as applied to them effected an impermissible infringement on their freedom of expression, due process and equal protection rights under Louisiana and Federal Constitutions. The district court rejected such claims, sustaining the constitutionality of the Accountancy Law.[14] The same claims were renewed on appeal, and again rejected. *Accountants' Ass'n of Louisiana* v. *State of Louisiana*, 533 So.2d 1251 (La. App. 4th Cir. 1988).

SUMMARY OF ARGUMENT

A state's regulation of the profession of public accounting is not subject to First Amendment scrutiny simply because the conduct or practice of the profession entails a form of communication. "It has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, or carried out

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[13]Contrary to petitioners' oft-repeated misrepresentation, the case was certainly not remanded to give the Board a "chance to meet [the] heavy burden" of establishing a "compelling state interest." *See* LSIA Petition 11, 14. The appellate court gave absolutely no indication that it gave any credence whatsoever to LSIA's notion that the Accountancy Law was suspect on First Amendment grounds.

[14]Judgment, *Accountants' Association of Louisiana, Et Al.* v. *State of Louisiana, Et Al.*, No. 83-6572 (Civ. D. Ct., Orl. Par., Dec. 8, 1987), reproduced at LSIA Petition, App. D, at A-19.

by means of language, either spoken or written."[15]

ARGUMENT

LSIA's argument that its members' performance of the Review function and rendition of Review reports is protected by the constitutional free speech guarantee is, in the end unalloyed constitutional nonsense. The fact that an element of commercial conduct may give rise to a form of expression does not constitute the expression as a form of speech—political, commercial or otherwise—that is entitled to constitutional protection. Nor does it place such conduct beyond the pale of state regulation. LSIA's claim in this respect, that is to say, is no different from the claim that one need not be a licensed member of the bar to render a legal opinion or that one need not be licensed as a physician to render a medical diagnosis. In either instance, the practice of law or the practice of medicine may take the form of an oral or written expression, but no court has ever questioned the legislature's right to prevent unlicensed persons from engaging in such conduct.

The constitutional guarantee of free speech is simply not implicated by such laws and is not implicated in this case. That this is so as a matter of First Amendment, free speech analysis, is well-established. As explained by Justice White,

> The power of government to regulate the professions is not lost when the practice of a profession entails speech. The underlying principle was expressed by the Court in Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502, 98 L.Ed. 834, 69 S.Ct. 864 (1949): "*it has never been deemed an abridgement of freedom of speech or*

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[15]Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949).

> *press to make a course of conduct illegal merely because the conduct was in part initiated, or carried out by means of language, either spoken, written, or printed.*"
>
> Perhaps the most obvious example of a "speaking profession" that is subject to governmental licensing is the legal profession. Although a lawyer's work is almost entirely devoted to the sort of communicative acts that, viewed in isolation, fall within the First Amendment's protection, we have never doubted that a State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar . . . ." Schware v. Board of Bar Examiners, [353 U.S. 232, 239, 1 L.Ed.2d 796, 77 S.Ct. 752 (1957)].

Lowe v. *S.E.C.*, 472 U.S. 181, 228 (1985) (White, J., concurring; emphasis supplied); see also *Ohralik* v. *Ohio State Bar Ass'n*, 436 U.S. 447, 456-57 (1978). These principles, it was observed, locate the point at which regulation of a profession leaves off and prohibitions on speech are implicated:

> One who takes the affairs of a client personally in hand and purports to exercise judgment on behalf of the client in the light of the client's individual needs and circumstances is properly viewed as engaging in the practice of a profession. Just as offer and acceptance are communications incidental to the regulable transaction called a contract, the professional's speech is incidental to the conduct of the profession. *If the government enacts generally applicable licensing provisions limiting the class of persons who may practice the profession, it cannot be said to have enacted a limitation on freedom of speech or the press subject to First Amendment scrutiny.*

Lowe, supra, 472 U.S. at 232, 86 L.Ed.2d at 164 (footnote

omitted; emphasis supplied).[16]

The case at bar most certainly presents an instance in which the state legislature has enacted "generally applicable provisions limiting the class of persons who may practice the profession" of public accounting, as defined by the Accountancy Law. That Law, accordingly, "cannot be said to have enacted a limitation on freedom of speech or the press" subject to constitutional free speech scrutiny. This critical distinction, which LSIA attempts valiantly to obscure, has nonetheless been recognized and applied by the courts in confronting similarly-based challenges to state regulation of professions and trades. See, *e.g.*, *Joslin* v. *Secretary of Dept. of Treasury*, 616 F. Supp. 1023 (D. Utah 1985) (sustaining constitutionality of regulations governing the standards of practice of attorneys who render opinions on tax shelter offerings). Most pertinent here is the recent opinion of a Virginia Federal District Court, rejecting the claims of LSIA's parallel association that the Virginia accountancy statutes abridged their freedom of speech by, *inter alia*, prohibiting all but Certified Public Accountants from performing and reporting on Reviews. The court held regulation of such services, which "consist of preparing reports and statements reflecting the financial condition of their clients for client and third-party use," constitute "regulations of a profession, not

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[16]Conversely, of course,

> [w]here the personal nexus between professional and client does not exist, and a speaker does not purport to be exercising judgment on behalf of any particular individual with whose circumstances he is directly acquainted, government regulation ceases to function as legitimate regulation of professional practice with only incidental impact on speech; it becomes regulation of speaking or publishing as such, subject to the First Amendment's command that "Congress shall make no law . . . abridging the freedom of speech, or of the press."

Lowe v. *S.E.C.*, 472 U.S. at 232 (footnote omitted).

restrictions on protected speech." *Accountants' Society of Virginia, Inc., Et Al.* v. *Earl J. Bowman, Et Al.*, No. 84-0376-R, Slip Op. at 4 (E.D. Va., Feb. 1, 1988).

In affirming, the Fourth Circuit Court of Appeals rejected the contention, urged here by Petitioners, that the district court had erroneously relied upon *Lowe* v. *S.E.C., supra,* and similarly rejected the accountants attempted portrayal of the "preparation of financial reports by non-CPAs as analagous to speech or publications addressing the general public." *Accountant's Soc'y of Virginia* v. *Bowman*, 860 F.2d 602, 603, 604 (4th Cir. 1988).[17]

LSIA's attempts to bring its members complaint under freedom of speech scrutiny are, in the end, predicated on two fundamental fallacies which permeate its argument, and on selective extraction, out of context, of statements appearing in cases having nothing whatsoever to do with freedom of speech analysis. As a first matter, thus, as evidenced by the emphasis it is given, LSIA attaches undue significance to the distinction between the performance of the Review function and the rendering of a Review report, and the fact that the Accountancy

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[17]The Fourth Circuit observed that

> non-CPAs undoubtedly perform personal services for their clients. They exercise their professional judgment in making individualized assessments of each client's financial situation, for which they are compensated by the client. While the information compiled by accountants and bookkeepers may be directed at third parties, it is not aimed at the general public. Rather, such information typically is used by lenders and insurers and has been prepared and circulated for the pecuniary benefit of the client, who has paid the accountant to prepare it. Clearly the relationship between accountant and client gives rise to "a personal nexus between professional and client." Lowe, 472 U.S. at 232, 105 S.Ct. at 2584. The [Virginia accountancy law] in question restricts only accountants' communications with and on behalf of their clients, as a means of regulating the professional activities of non-CPAs.

860 F.2d at 604-05.

Law expressly prohibits the latter, but not the former. LSIA's apparent theory is that uncertified accountants may not constitutionally be prevented from reporting on an activity which the law permits them to engage in.

This distinction is, and always has been, meaningless. The entire purpose of undertaking the inquiry and analytical functions of a Review is to enable the accountant to express a level of assurance on financial statements in the form of a Review report. In artificially distinguishing the "performance of a Review" from the rendering of a Review report, LSIA effectively isolates an inchoate activity. The distinction and the argument is akin to the suggestion that, as it is not illegal for any person to engage in legal research—*e.g.*, reading of statutes and jurisprudence—the rendering of legal opinions should be constitutionally protected and not restricted to persons who have met governmental requirements for admission to the bar. LSIA's position would have equal applicability to the practice of medicine, if one were to distinguish between the physical acts predicate to rendering a diagnosis, and the expression of a medical diagnosis itself. In these areas, as it is with public accounting, statutory law properly focuses on the end result of the predicate activities, rather than the predicate activities themselves. The fact that the two may be semantically and artificially separated does not have any implication for the government's right to regulate the profession without abridging freedom of speech.

It bears special observation and emphasis, moreover, that the Accountancy Law does not, as Petitioners may suggest, prohibit the expression of Review reports or act as a prior restraint. Lost among LSIA's ruminations is the fact that Review reports are not prohibited, they are only regulated. That is to say that anyone who, by education and testing, demonstrates the level of competence requisite to certification and licensure, may lawfully render a Review report. Petitioners are prohibited from rendering such reports not by virtue

of a legal prohibition on their engagement in a profession, or upon their exercise of free speech rights, but because they will not, or cannot, demonstrate the proficiency demanded as a matter of governmental policy to protect the public health, safety and welfare.[18]

Finally, even were it assumed *arguendo* that the expression of an opinion or the giving of an assurance with respect to financial statements constitutes a form of commercial speech, it is well-established that such "speech" is subject to regulation to promote legitimate governmental interests. And it is certain that the State of Louisiana has a substantial interest in the regulation of professions, including public accounting. As put by the Court, the states

> have a *compelling interest* in the practice of professions within their boundaries, and . . . as part of their power to protect the public health, safety and other valid interests they have *broad power to establish standards for licensing practitioners and regulating the practice of professions*.

Goldfarb v. *Virginia State Bar*, 421 U.S. 773, 792 (1975) (emphasis supplied). Every licensing law enacted within the contours of such power affects the capacity of unlicensed persons to engage in conduct or express opinions within the regulated discipline. It may be seen, then, that LSIA's claim here, though presented as a narrow attack on a specific function, is nothing less than a facial challenge to the very notion of professional licensing. That challenge has been consistently rejected in the past. It should again be rejected by this Court.

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[18]If LSIA's unstated assertion in fact is that the standards erected by the Accountancy Law are themselves unjustifiably rigorous, that is a political, not a constitutional question, which should be addressed to the Louisiana Legislature, not to the courts.

CONCLUSION

For the foregoing reasons, the State Board of Certified Public Accountants of Louisiana respectfully urges the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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